

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 357 Self-Service Storage Facilities

**SPONSOR(S):** Moraitis, Jr.

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson	Anstead
2) Civil Justice & Claims Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Self-storage Facility Act (the Act) controls the relationship between the owner of a self-service storage facility and a tenant with whom the owner has entered into an agreement. The act controls the enforcement of an owner's lien upon all personal property located at the self-service storage facility for failure to pay rent.

Self-service storage facility owners are currently permitted to sell personal property in a tenant's storage unit if the tenant fails to pay rent. The facility owner is required to give notice to the tenant of the intent to sell the property before the sale.

The bill revises the options available to an owner of a self-storage facility for dealing with a tenant who is delinquent on rent or other expenses. The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions. The facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill limits the value of property contained in a storage unit if the value was limited in the rental agreement. This provision appears to be a restatement of current case law.

The bill authorizes a facility owner to have a motor vehicle or watercraft towed, without liability for damages upon possession by a wrecker, if a lien is claimed and if the tenant has failed to pay rent or other charges. The bill also authorizes a facility owner to sell a motor vehicle or watercraft at public auction if the identity of the owner and any lienholders is verified by checking the Department of Highway Safety and Motor Vehicles database, notice is provided, and the lien remains unsatisfied.

The bill allows a storage facility to charge a reasonable late fee for the nonpayment of rent, and for any expenses incurred as a result of rent collection or lien enforcement. The late fee and conditions must be stated in the rental agreement, and the bill provides that a reasonable late fee is the greater of \$20 or 20 percent of the monthly rent. The bill does not define what constitutes a "reasonable fee" for the expenses incurred as a result of rent collection or lien enforcement.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the Act). The Act provides remedies for the owner of a self-service storage facility in the event that a tenant does not pay rent.<sup>1</sup> The Act gives the facility owner the ability to deny a tenant access to his or her property if the tenant is more than five days delinquent in paying rent.<sup>2</sup>

The Act provides that the owner of a self-service storage facility has a lien upon all personal property located at a self-service storage facility for rent, labor charges, or other charges in relation to the personal property and for the expenses necessary to preserve or dispose of the property.<sup>3</sup> The facility owner is required to take certain steps before satisfying the lien.

First, the tenant must be provided written notice prior to the sale of the property. The notice must be delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility. The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

If the tenant has not satisfied the payments after the expiration of the time provided by the notice, the facility owner may advertise for a sale of the property. An advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.<sup>4</sup> The advertisement must include a brief and general description of the property believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.<sup>5</sup>

The facility owner may then satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.<sup>6</sup>

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the facility owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.<sup>7</sup>

##### **Effect of the Bill**

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<sup>1</sup> "Self-service storage facility" is defined by s. 83.803(1), F.S., as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who have access to such space for the purpose of storing and removing personal property.

<sup>2</sup> s. 83.8055, F.S.

<sup>3</sup> s. 83.805, F.S.

<sup>4</sup> s. 83.806, F.S.

<sup>5</sup> s. 83.806(4)(a), F.S.

<sup>6</sup> s. 83.806(8), F.S.

<sup>7</sup> *Id.*

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions and provides that the facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill creates s. 83.806(9), F.S., to limit the value of property that may be stored in a storage unit if the value is limited in the rental agreement. This limits the liability of the facility to the amount stated in the contract if the contents of the unit are damaged or stolen or if the facility owner wrongfully sells the tenant's property. This provision appears to be a restatement of current case law.<sup>8</sup>

The bill provides that, when a lien is claimed on property that is a motor vehicle or watercraft and charges are 60 past due, a facility owner may:

- Have the motor vehicle or watercraft towed. The bill provides that the facility owner is no longer liable for the property after the wrecker takes possession. The bill requires a wrecker that takes possession of a motor vehicle or watercraft to comply with notification and sale requirements pursuant to s. 713.78, F.S.
- Sell the motor vehicle or watercraft by public auction. Before the sale, the facility owner must contact the Department of Highway Safety and Motor Vehicles (DHSMV) to determine whether there are any lienholders and for contact information for the motor vehicle or watercraft owner. If the motor vehicle or watercraft is not titled in Florida, the facility or unit owner must check the National Motor Vehicle Title Information System or an equivalent commercially available system to determine ownership and whether there are any lienholders.

Within 10 days of receiving such information, the facility owner must send written notice to the lienholder and property owner by certified mail. If a motor vehicle or watercraft owner identified is the same as the tenant in default who has been notified pursuant to s. 83.806(1), F.S., the facility owner may send written notice to the property owner by first-class mail. The notice must state that:

- the facility owner is holding the motor vehicle or watercraft,
- a lien has attached,
- payment is required within 30 days, and
- the property may be sold if the lien is not satisfied. If an owner or lienholder receives notice of the sale and does not satisfy the lien, the facility owner may sell the motor vehicle or watercraft.

The bill also allows a storage facility to charge a reasonable late fee for each rental period that a tenant does not pay rent. However, this fee may be imposed and collected only if its amount is set forth in the contract with the tenant. Also, the fee may not exceed the greater of \$20 or 20 percent of the monthly rent. In addition to the late fee, any reasonable expense incurred by an owner as a result of rent collection or lien enforcement may be charged to the tenant.

## B. SECTION DIRECTORY:

Section 1: Amends s. 83.806, F.S., revising requirements for the advertisement of the sale or disposition of property held in a self-service storage facility, limiting the maximum value of

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<sup>8</sup> *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4th DCA 1996).

certain property under certain circumstances, and providing options and notice requirements for the disposition of motor vehicles or watercraft claimed to be subject to a lien.

Section 2: Amends s. 83.808, F.S., authorizing a facility or unit owner to charge a tenant certain fees under certain conditions

Section 3: Provides an effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill expressly states that lien sales by a self-storage facility may be conducted on the Internet. This could increase the use of Internet-based sales by storage facilities, and these sales would likely benefit the website hosting the sales. Additionally, the use of Internet-based sales may increase the number of bidders on items from a delinquent tenant's storage unit and result in higher prices for items sold. As a result, there may be additional funds to pay the storage facility's lien and additional surplus fund for the tenant.

### **D. FISCAL COMMENTS:**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

There appears to be no rulemaking authority added or amended.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

The limitation of the liability of the facility owner for the value of the tenant's property, as agreed to in the rental agreement, may have the effect of allowing for an actionable claim for damages by the tenant if the facility owner sells the property for less than the amount indicated in the contract. This provision could be clarified to indicate that the agreed upon limitation in the contract does not reflect fair market value and is not a determination of the value of the property.

The bill permits a storage facility to hold a lien sale online. This option, when read together with the rest of s. 83.806(4), F.S, may cause confusion. Current law states that the required advertisement for a lien sale must include the “*place . . . .* of the sale or other disposition.”<sup>9</sup> (Emphasis added). The Sponsor may wish to amend the bill to clarify whether the advertisement must include the physical address of sale, the website address, or both.

The bill does not define what constitutes a “reasonable fee” for the expenses incurred as a result of rent collection or lien enforcement.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>9</sup> s. 83.806(4)(a)3., F.S.  
**STORAGE NAME:** h0357.CCS  
**DATE:** 2/20/2017